

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION CONFERENCE COMMITTEE ON SENATE AMENDMENTS TO HOUSE BILL 119

Call to Order: By **CHAIRMAN JACK WELLS**, on April 17, 2001 at 9:30 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Sen. Jack Wells, Chairman (R)
Sen. Tom A. Beck (R)
Sen. Debbie Shea (D)
Rep. Jim Shockley, Vice Chair (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Staff
Mary Lou Schmitz, Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: HB 119

Senator Wells stated that when the Bill was initially presented it did not address the issues of offenses committed prior to March 20, 1989. The House amended that to put in those stipulations. He called on **Rep. Noennig** to explain further.

Rep. Noennig said the Legislative Audit Committee determined that there was an arguably non-compliance with existing law because there was a statutory scheme for the Board of Pardons and Parole that appeared to have two different sections inconsistent, one of which required an appearance before the Board itself and the other which allowed it to designate one of its members. So the original Bill, as it came to the House, reconciled that inconsistency by revising one of the sections, 202, to allow a designee so that both sections were then in harmony.

The problem that came about in the House Judiciary Committee was that there is a Montana Supreme Court decision, called the Sage decision, which says "in order to afford due process to a prospective parolee or probationer, there must be a face to face appearance with the Board". When he discussed this with **Craig Thomas, Secretary of the Board**, he pointed out that that decision was based on a case that occurred with sentencing prior to March, 1989. In March, 1989 the statute was changed from "you shall be entitled to a parole under certain circumstances" to "you may be entitled to a parole under certain circumstances". The import of that, which seems pretty consistent in other cases, is that due process requires deprivation of life, liberty or property and since the "shall" language was in there they determined the parolees had a liberty interest so that the due process had to be filed. Arguably when the "may" language was changed in 1989 there wasn't such a liberty interest in having a parole so that the due process requirements didn't apply. The issue then only pertained to those cases which had been sentenced prior to March, 1989.

The underlying problem is that this is a citizen's parole board and they have a difficult time getting to all the hearings and meeting face-to-face with these people. The House Judiciary Committee amended this to say "prior to March 20, 1989, they couldn't designate somebody, it had to be an actual appearance but after March 20, 1989, they could". All of the offenders in the state prison have personally appeared before the full Board, even for those committed prior to 1989, but those in the out-of-state or community corrections program sometimes are interviewed by only one or two Board members but they have a right to appeal to the full Board.

The Senate changed this again to say for offenses committed prior to March 20, 1989, the offenders could appear before one member of the Board. This is a three-member Board and a majority of the Board is required to make a decision. The theory was that as long as there is a personal appearance, that ought to be sufficient and relying on two cases in the Montana Supreme Court which said that "a personal appearance for due process requirements is not required before the full Board" but they never did say that it could be just one member of the Board, not a majority of the Board. **Rep. Noennig** feels there is still an issue in the way it is amended in the Senate. The Senate amendments may or may not pass the Supreme Court's test for the Constitutional due process requirements.

Senator Wells said at this point, the difference between what the House thinks is appropriate for the Bill and what the Senate Judiciary felt, basically boils down to whether we need a

majority of the Board people to present themselves in a hearing before the individual or whether one member of the Board is sufficient.

Senator Beck said this is just a hearing before the parole officer and no decisions are being made. With our institutions scattered all over the state and to have a majority of the Board at each location is a problem. What we are trying to accomplish is to hold the cost down and still have the hearing process. He called on **Mr. Thomas** to address the matter.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 10.0}

Mr. Thomas said as far as liberty interest cases are concerned, the Board insures that at least one Parole Board member conducts those hearings. Right now there are five citizen Board members and they handle about 2,000 cases a year, traveling throughout the State of Montana. It is their position, the Board members, the staff and their legal counsel, that one Board member conducting those hearings for liberty interest cases, submitting a recommended case disposition to the full Board when they meet in Deer Lodge, and the full Board making the final decision, meets due process.

They have a limited budget and a citizen parole Board, which he thinks is a great process. They were also recently accredited by the American Corrections Association, who audited their entire process. They have an appeal process in place that is part of the accreditation process. They will certainly follow what the Supreme Court directs them to do.

Rep. Shockley asked **Mr. Thomas** to describe how the appeal process works. **Mr. Thomas** said it is an informal appeal process. When he conducts a hearing with the hearing examiner, that hearing examiner takes testimony from the offender, the offender's family or any other person in support of parole, and any victims or legal authorities that may want to testify. Notes are taken and then the examiner reviews the offender's back-up, the legal information on file, the circumstances of the offense, time served, eligibility dates, what they have done in the institution as far as treatment and conduct. On conclusion of the hearing, the officer issues a recommended case disposition, verbally advises the offender what that recommendation will be and then gives the offender a copy of the recommended disposition. Part of that disposition has a notice that the full Board will meet at the end of the month and make the final decision and the offender can submit information to the full Board prior to a final decision. In addition to that, they allow an offender within 60 days of the hearing to submit a request to **Mr. Thomas** indicating

there were some problems in the hearing or the decision was based on possibly some erroneous information or they have some additional information they want to submit. At that point **Mr. Thomas** can review that information and if he finds there is merit, can schedule a recount.

Senator Wells said he understands the way **Mr. Thomas** has been operating is somewhat similar to what the Bill is addressing. In other words, these people with the liberty interest or the offenders who committed crimes before the March, 1989 date would be afforded a hearing before at least one member of the Board.

Mr. Thomas said that is correct. **Senator Wells** said if they were to go to a majority of the Board that would be an additional step beyond what he is currently doing. **Mr. Thomas** said that is correct. There is a fiscal impact if the majority of the Board members have to conduct the hearings. **Senator Wells** asked about the general work load and could the Board handle it within the time limits? **Mr. Thomas** said with the five-member citizen Board they have now, it is highly unlikely he would be able to schedule a majority of the Board members to conduct these hearings in a timely manner. What they would have to do is continue some cases for a number of months until they are able to get the majority of Board members there and might have to approach the Department of Corrections and ask them to transport offenders from out-of-state back to Montana or in the outlying areas, back to an area where they will have a majority of the Board members present.

Rep. Shockley said the legislature authorized the use of video last session. It would seem to save a lot of time. **Mr. Thomas** said that is correct. The legislature did authorize the Board to conduct hearings by video conferencing but again they are dealing with regional, private and out-of-state facilities that do not have the fiber optics, equipment or funding to put that process in place. If that was available, it would be an excellent solution but even with that circumstance, having the majority of the Board hear all those cases with a citizen Board, citizens who have other jobs but volunteer to take care of this business, it would be very difficult. One of the key issues, is to minimize the risk of error in the parole process.

Senator Beck referred to the Senate amendments and asked **Mr. Thomas** if he felt comfortable with those amendments. **Mr. Thomas** said that is exactly how the Board is conducting business now.

Rep. Newman said he agreed with **Senator Beck** and when it was discussed on the House floor the concerns were the same. As long as the majority of the full Board is making decisions, he does not feel due process requires more than one person to conduct the hearing.

Rep. Noennig said he did not share the same analysis. He understands the procedures and the time restraints. All he is focusing back on is what the Montana Supreme Court has said.

{Tape : 1; Side : A; Approx. Time Counter : 3.6 - 30.3}

Motion/Vote: Senator Beck moved to accept the Senate amendments. The motion carried 5-1 with Rep. Noennig voting no.

{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 3.8}

ADJOURNMENT

Adjournment: 10:10 A.M.

SEN. JACK WELLS, Chairman

Mary Lou Schmitz, Secretary

JW/mls

EXHIBIT (cch84hb0119aad)